

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

PART 327  
GREAT LAKES PRESERVATION

**324.32701 Definitions.**

Sec. 32701. As used in this part:

(a) "Adverse resource impact" means either of the following:

(i) Decreasing the flow of a stream by part of the index flow such that the stream's ability to support characteristic fish populations is functionally impaired.

(ii) Decreasing the level of a body of surface water such that the body of surface water's ability to support characteristic fish populations is functionally impaired.

(b) "Agricultural purpose" means the agricultural production of plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur.

(c) "Baseline capacity" means either of the following:

(i) The following applicable withdrawal capacity as reported to the department or the department of agriculture, as appropriate, by the person making the withdrawal in the April 1, 2007 annual report submitted under section 32707 or in the April 1, 2007 water use conservation plan submitted under section 32708:

(A) For a community supply, the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, on the effective date of the amendatory act that added this subparagraph.

(B) Unless reported under a different provision of this subparagraph, for a quarry or mine that holds an authorization to discharge under part 31 that includes a discharge volume, the discharge volume stated in that authorization on the effective date of the amendatory act that added this subparagraph.

(C) The system capacity used or developed to make a withdrawal on the effective date of the amendatory act that added this subparagraph, if the system capacity and a description of the system capacity are included in an annual report that is submitted under this part.

(ii) If the person making the withdrawal does not report under subparagraph (i), the highest annual amount of water withdrawn as reported under this part for calendar year 2002, 2003, 2004, or 2005.

(d) "Community supply" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

(e) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. Consumptive use includes a withdrawal of waters of the Great Lakes basin that is packaged within the Great Lakes basin in a container of 5.7 gallons (20 liters) or less.

(f) "Department" means the department of environmental quality.

(g) "Designated trout stream" means a trout stream identified on the document entitled "Designated Trout Streams for the State of Michigan", as issued under order of the director of the department of natural resources, FO-210.04, on October 10, 2003.

(h) "Diverted" means a transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Great Lakes basin into a watershed outside of the Great Lakes basin. Diverted includes a transfer of water withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters). Diverted does not include any of the following:

(i) A consumptive use.

(ii) The supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of vehicles.

(iii) Use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

(i) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

- (i) Are environmentally sound.
- (ii) Reflect best practices applicable to the water use sector.
- (iii) Are technically feasible and available.
- (iv) Are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.
- (v) Consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the process employed, energy impacts, and other appropriate factors.
- (j) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.
- (k) "Generally accepted water management practices" means standards or guidelines for water use that ensure water is used efficiently.
- (l) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.
- (m) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.
- (n) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.
- (o) "Index flow" means the 50% exceedance flow for the lowest flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the United States geological survey stream flow gauges in Michigan.
- (p) "Large quantity withdrawal" means 1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.
- (q) "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.
- (r) "New or increased withdrawal capacity" means new or additional water withdrawal capacity to supply a common distribution system that is an increase from the person's baseline capacity. New or increased capacity does not include maintenance or replacement of existing withdrawal capacity.
- (s) "Political subdivision" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.
- (t) "Registrant" means a person who registers water withdrawal capacity under this part.
- (u) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.
- (v) "Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of the state. Waters of the state do not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.
- (w) "Withdrawal" means the removal of water from its source for any purpose, other than for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32702 Legislative findings and declarations; authority.**

Sec. 32702. (1) The legislature finds and declares that:

(a) A diversion of water out of the basin of the Great Lakes may impair or destroy the Great Lakes. The legislature further finds that a limitation on such diversions is authorized by and is consistent with the mandate of section 52 of article IV of the state constitution of 1963 that the legislature provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.

(b) Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support the state's opposition to diversion of waters of the Great Lakes basin and to provide a source of information on water use to protect Michigan's rights when proposed water losses affect the level, flow, use, or quality of waters of the Great Lakes basin.

(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future interbasin diversions and consumptive uses of waters of the Great Lakes basin may have significant adverse impacts upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

(i) The waters of the Great Lakes basin are capable of concurrently serving multiple uses, and such multiple uses of water resources for municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem and other purposes are encouraged, recognizing that such uses are interdependent and must be balanced.

(2) The legislature has the authority under sections 51 and 52 of article IV of the state constitution of 1963 to regulate the withdrawal and uses of the waters of the state, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the state from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. This authority extends to all waters within the territorial boundaries of the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32703 Diversion of waters prohibited.**

Sec. 32703. Subject to section 32704, the waters of the Great Lakes basin within the boundaries of this state shall not be diverted out of the Great Lakes basin.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32703a Diversion; authorization; conditions.**

Sec. 32703a. (1) If the prohibition in section 32703 is determined to be invalid, the waters of the state shall not be diverted unless authorized by law.

(2) When considering whether to grant legislative approval for a diversion, the legislature shall consider sections 51 and 52 of article IV of the state constitution of 1963 and whether the project serves a public purpose, whether the project will result in no material harm to the waters of the state, the public trust, or related purposes, and whether the project would result in any improvement to the waters of the state or the water dependent natural resources of the state.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32704 Applicability of § 324.32703.**

Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

### **324.32704a Diversion; proposal; comment period; notification; waiver.**

Sec. 32704a. The governor shall establish a public comment period with regard to a proposal subject to 42 USC 1962d-20 to divert waters of the Great Lakes basin outside of the Great Lakes basin and shall notify the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment of his or her receipt of the proposal. The governor may waive the comment period under this section if he or she determines that it is necessary to take immediate action to provide humanitarian relief or firefighting capabilities.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

#### **324.32705 Registration; exception; agricultural purpose; form; calculating total amount of existing or proposed withdrawal; aggregate information.**

Sec. 32705. (1) Except as otherwise provided in this section, the owner of real property who has the capacity on that property to make a large quantity withdrawal from the waters of this state shall register with the department prior to beginning that withdrawal.

(2) The following persons are not required to register under this section:

(a) A person who has previously registered for that property under this part, unless that registrant develops new or increased withdrawal capacity on the property of an additional 100,000 gallons of water per day from the waters of the state.

(b) A community supply owned by a political subdivision that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(c) A person holding a permit under section 32723.

(d) The owner of a noncommercial well on residential property.

(3) The following persons shall register under this section but may register after beginning the withdrawal but before 90 days after the effective date of the amendatory act that added this section:

(a) A person who was developing new or increased withdrawal capacity on the effective date of the amendatory act that added this section.

(b) A person who was not required to register under this part prior to the effective date of the amendatory act that added this section.

(4) Subsection (1) does not limit a property owner's ability to withdraw water from a test well prior to registration if the test well is constructed in association with the development of new or increased withdrawal capacity and used only to evaluate the development of new or increased withdrawal capacity.

(5) A registration under this section by the owner of a farm in which the withdrawal is intended for an agricultural purpose, including irrigation for an agricultural purpose, shall be submitted to the department of agriculture instead of the department.

(6) A registration submitted under this section shall be on a form provided by the department or the department of agriculture, as appropriate.

(7) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.

(8) The department shall aggregate information received by the state related to large quantity withdrawal capacities within the state and reported large quantity withdrawals in the state.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

#### **324.32706 Registration; required statement and supporting documentation.**

Sec. 32706. Each registration under this part shall consist of a statement and supporting documentation that includes all of the following:

(a) The place and source of the proposed or existing withdrawal.

(b) The location of any discharge or return flow.

(c) The location and nature of the proposed or existing water user.

(d) The actual or estimated average annual and monthly volumes and rate of withdrawal.

(e) The actual or estimated average annual and monthly volumes and rates of consumptive use from the withdrawal.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996.

**Popular name:** Act 451

#### **324.32707 Reporting requirements; forms; water use reporting fees.**

Sec. 32707. (1) Except as provided in subsections (2) and (3), a person who is required to register under section 32705 or holds a permit under section 32723 shall file a report annually with the department on a form provided by the department. Reports shall be submitted by April 1 of each year. Except as provided in subsection (8), reports shall include the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis.

(b) The source or sources of the water supply.

- (c) The use or uses of the water withdrawn.
  - (d) The amount of consumptive use of water withdrawn.
  - (e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.
  - (f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.
  - (g) Other information specified by rule of the department.
  - (h) At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if applicable, a description of the system capacity. If the registrant or permit holder chooses to report the baseline capacity under this subdivision, that information shall be included in the next report submitted by the registrant or permit holder after the effective date of the amendatory act that added this subdivision. Information reported under this subdivision needs only to be reported to the department on 1 occasion.
  - (i) At the discretion of the registrant or permit holder, the amount of water returned to the source watershed.
- (2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, shall satisfy the reporting requirements of this section.
- (3) The owner of a farm who reports water use under section 32708 is not required to report under subsection (1).
- (4) The department may, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).
- (5) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.
- (6) Information described in section 32701(c)(i)(C) that is provided to the department under subsection (1)(h) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed unless the department determines that the withdrawal is causing an adverse resource impact.
- (7) Except as otherwise provided in this subsection, a person who files an annual report or notification under this section shall annually remit a water use reporting fee of \$200.00 to the department. Beginning when a water withdrawal assessment tool becomes effective upon legislative enactment pursuant to the recommendations of the groundwater conservation advisory council under section 32803, a person who files an annual report or notification under this section shall annually remit a water use reporting fee of \$100.00 to the department. Water use reporting fees shall be remitted to the department in conjunction with the annual report or notification submitted under this section. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. A water use reporting fee is not required for a report or notification related to a farm that reports withdrawals under section 32708 or for a report under subsection (8).
- (8) A person who withdraws less than 1,500,000 gallons of water in any year shall indicate this fact on the reporting form and is not required to provide information under subsection (1)(a) or (d). A person who withdraws less than 1,500,000 gallons of water in any year is not required to pay the water use reporting fee under subsection (7).

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32708 Water use conservation plan; formula or model to estimate consumptive use of withdrawals for agricultural purposes; inclusion of information in statewide groundwater inventory and map; disclosure.**

Sec. 32708. (1) The owner of a farm that is registered under this part who makes a withdrawal for an agricultural purpose, including irrigation for an agricultural purpose, may report the water use on the farm by annually submitting to the department of agriculture a water use conservation plan. Conservation plans shall be submitted by April 1 of each year. The water use conservation plan shall include, but need not be limited to, all of the following information:

- (a) The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.
- (b) The type of crop irrigated, if applicable.



- (c) The acreage of each irrigated crop, if applicable.
  - (d) The source or sources of the water supply.
  - (e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.
  - (f) If the water withdrawn is not used entirely for irrigation, the use or uses of the water withdrawn.
  - (g) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.
  - (h) Applicable water conservation practices and an implementation plan for those practices.
  - (i) At the discretion of the registrant, the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity. If the registrant chooses to report the baseline capacity under this subdivision, that information shall be included in the next report submitted by the registrant after the effective date of the amendatory act that added this subdivision. Information reported under this subdivision needs only to be reported to the department of agriculture on 1 occasion.
- (2) The department and the department of agriculture in consultation with Michigan state university shall validate and use a formula or model to estimate the consumptive use of withdrawals made for agricultural purposes consistent with the objectives of section 32707.
- (3) Subject to subsection (4), information provided to the department of agriculture under subsection (1)(a), (d), and (e) shall be forwarded to the department for inclusion in the statewide groundwater inventory and map prepared under section 32802.
- (4) Information provided under subsection (1)(a), (e), and (i) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department, the department of agriculture, or the department of natural resources unless the department determines that the withdrawal is causing an adverse resource impact.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32708a Water management practices or water conservation measures; guidelines.**

Sec. 32708a. (1) Within 12 months after the effective date of the amendatory act that added this section, each water user's sector shall begin designing guidelines for generally accepted water management practices or environmentally sound and economically feasible water conservation measures within that sector. Within 24 months after the effective date of the amendatory act that added this section, the department shall review and report to the appropriate standing committees of the legislature on whether or not there are reasonably detailed criteria for assisting a facility in determining whether water is being used in an efficient manner. Such guidelines may be adopted by an established statewide professional or trade association representing that sector.

(2) Compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law.

**History:** Add. 2006, Act 35, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32709 Informational materials.**

Sec. 32709. The department may contract for the preparation and distribution of informational materials to persons who withdraw water for irrigation or industrial purposes regarding the purposes, benefits, and requirements of this part, and may also provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

### **324.32710 Duties of department.**

Sec. 32710. The department shall do all of the following:

(a) Cooperate with the states and provinces in the Great Lakes region to develop and maintain a common base of information on the use and management of the water of the Great Lakes basin and to establish systematic arrangements for the exchange of this information.

(b) Collect and maintain information regarding the locations, types, and quantities of water use, including water withdrawals and consumptive uses, in a form that the department determines is comparable to the form used by other states and provinces in the Great Lakes region.

(c) Collect, maintain, and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region.

(d) Cooperate with other states and provinces in the Great Lakes region in developing a long-range plan for developing, conserving, and managing the water of the Great Lakes basin.

(e) Participate in the development of a regional consultation procedure for use in exchanging information on the effects of proposed water withdrawals and consumptive uses from the Great Lakes basin.

(f) Develop procedures for notifying water users and potential water users of the requirements of this part.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

### **324.32711, 324.32712 Repealed. 2006, Act 33, Imd. Eff. Feb. 28, 2006.**

**Compiler's note:** The repealed sections pertained to an exemption from water withdrawal reporting requirements for a public water supply and the prohibition on the department to mandate a permit or regulate water withdrawal.

**Popular name:** Act 451

### **324.32713 Civil action.**

Sec. 32713. The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a rule promulgated under this part. An action under this section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted, the court may impose a civil fine of not more than \$1,000.00. However, a person who knowingly violates section 32721 or 32723 or the terms of a permit issued under section 32723 is responsible for the payment of a civil fine of not more than \$5,000.00 per day of violation. In addition to a fine, the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

**History:** Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32714 Water use protection fund; creation; disposition of assets; investments; money remaining in fund; expenditures.**

Sec. 32714. (1) The water use protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund, and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse into the general fund.

(4) The department may expend money from the fund, upon appropriation, only for 1 or more of the following:

(a) The implementation and administration of this part.

(b) The preparation of the statewide groundwater inventory and map under section 32802.

(c) The expenses of the groundwater conservation advisory council under part 328.

(d) The implementation and administration of part 317.

**History:** Add. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32721 Large quantity withdrawal; prohibitions.**

Sec. 32721. (1) A person shall not make a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact to a designated trout stream.

(2) Beginning 2 years after the effective date of the amendatory act that added this section, a person shall not make a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact.

(3) This section does not apply to the baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal that existed on the effective date of the amendatory act that added this section.

(4) This section does not apply to a withdrawal that is utilized solely for fire suppression.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32722 Presumption.**

Sec. 32722. (1) Until a water withdrawal assessment tool becomes effective upon legislative enactment pursuant to the recommendations of the groundwater conservation advisory council under section 32803, there is a rebuttable presumption that a new or increased large quantity withdrawal will not cause an adverse resource impact in violation of section 32721 under either of the following circumstances:

- (a) The location of the withdrawal is more than 1,320 feet from the banks of a designated trout stream.
- (b) The withdrawal depth of the well is at least 150 feet.

(2) A presumption under subsection (1) may be rebutted by a preponderance of evidence that a new or increased large quantity withdrawal from the waters of the state has caused or is likely to cause an adverse resource impact.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32723 Water withdrawal permit; persons required to obtain; application; fee; issuance; conditions; revocation; petition for contested case hearing; exemptions from permit requirements; definitions.**

Sec. 32723. (1) Except as provided in subsection (10), the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who develops withdrawal capacity to make a new withdrawal of over 2,000,000 gallons of water per day from the waters of the state, other than the Great Lakes and their connecting waterways, to supply a common distribution system.

(b) A person who develops increased withdrawal capacity beyond baseline capacity of more than 2,000,000 gallons of water per day from the waters of the state, other than the Great Lakes and their connecting waterways, to supply a common distribution system.

(c) A person who develops withdrawal capacity to make a new withdrawal of more than 5,000,000 gallons of water per day from the Great Lakes and their connecting waterways to supply a common distribution system.

(d) A person who develops increased withdrawal capacity beyond baseline capacity of more than 5,000,000 gallons of water per day from the Great Lakes and their connecting waterways to supply a common distribution system.

(2) A person shall apply for a permit under this section by submitting an application to the department containing the information described in section 32706. In addition, until 5 years after the effective date of the amendatory act that added this section, the applicant shall submit an application fee in the amount of \$2,000.00. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. The department shall provide public notice of all applications received under this section.

(3) A permit application is considered to be administratively complete effective 30 days after it is received by the department unless the department notifies the applicant, in writing, during this 30-day period that the application is not administratively complete or that the fee required to be accompanied with the application has not been paid. If the department determines that the application is not administratively complete, the notification shall specify the information necessary to make the application administratively complete. If the department notifies the applicant as provided in this subsection, the 30-day period is tolled until the applicant submits to the department the specified information or fee.

(4) The department shall make a decision whether to grant or deny a permit under this section within 120 days of receipt of an administratively complete application.

(5) The department shall issue a permit under subsection (1)(a) or (b) if the department determines that the withdrawal is not likely to cause an adverse resource impact.

(6) The department shall issue a permit under subsection (1)(c) or (d) if all of the following conditions are met:

(a) All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.

(b) The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative adverse resource impacts under this subdivision shall be evaluated by the department based upon available information gathered by the department.

(c) Subject to section 32726, the withdrawal will be implemented so as to ensure that it is in compliance



with all applicable local, state, and federal laws as well as all legally binding regional interstate and international agreements, including the boundary waters treaty of 1909.

(d) The proposed use is reasonable under common law principles of water law in Michigan.

(e) The applicant has considered voluntary generally accepted water management practices or environmentally sound and economically feasible water conservation measures.

(7) A permit issued under part 31 pursuant to 33 USC 1326(b) shall be considered sufficient to demonstrate that there will not be an adverse resource impact under section 32721 and satisfies the conditions for a permit under this section. Upon receipt of a permit application and evidence that the applicant holds a part 31 permit described in this subsection, the department shall grant the applicant a permit under this subsection.

(8) The department may revoke a permit issued under this section if the department determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

(9) A person who is aggrieved by a determination of the department under this section related to a permit may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the permit may be rejected by the department as being untimely. The department shall issue a final decision on a petition for a contested case hearing within 6 months after receiving the petition. A determination, action, or inaction by the department following a contested case hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The following are not required to obtain a permit under this section:

(a) A community supply owned by a political subdivision that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) A person who makes seasonal withdrawals of not more than 2,000,000 gallons of water per day average in any consecutive 90-day period to supply a common distribution system.

(c) A person engaged in producing bottled drinking water who receives approval by the department under a water source review conducted under section 17 of the safe drinking water act, 1976 PA 399, MCL 325.1017.

(11) As used in this section:

(a) "Great Lakes and their connecting waterways" means Lakes Superior, Michigan, Huron, Erie, and Ontario and their connecting waterways including the St. Marys river, Lake St. Clair, the St. Clair river, and the Detroit river. For purposes of this section, Lakes Huron and Michigan shall be considered a single Great Lake.

(b) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake, with a preference for returning water to the direct tributary stream watershed from which it was withdrawn.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32724 Persons exempt from permit requirements; petition.**

Sec. 32724. (1) A person who intends to make a new or increased large quantity withdrawal for which a permit is not required under section 32723 may petition the department for a determination that the new or increased withdrawal is not likely to cause an adverse resource impact.

(2) A petition under subsection (1) shall be submitted on a form provided by the department. A report shall be submitted with the petition containing the information described in section 32706 and an evaluation of environmental, hydrological, and hydrogeological conditions that exist and the predicted effects of the intended withdrawal that provides a reasonable basis for the determination to be made. The petitioner shall also include with the petition a fee of \$5,000.00. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(3) A petition is considered to be administratively complete effective 30 days after it is received by the department unless the department notifies the petitioner, in writing, during this 30-day period that the petition is not administratively complete or that the fee required to be accompanied with the petition has not been paid. If the department determines that the petition is not administratively complete, the notification shall specify the information necessary to make the petition administratively complete. If the department notifies

the petitioner as provided in this subsection, the 30-day period is tolled until the petitioner submits to the department the appropriate information or fee.

(4) Within 120 days after receipt of an administratively complete petition, the department shall issue a written determination to the petitioner that does either of the following:

(a) Affirms that the proposed withdrawal is not likely to cause an adverse resource impact.

(b) Specifies the reasons that an affirmative determination under subdivision (a) cannot be made and states how the petitioner can meet the criteria to obtain an affirmative determination.

(5) In making a determination under subsection (4) with regard to a community supply owned by a political subdivision, the department shall consider the factors provided in section 4(4)(a) and (b) of the safe drinking water act, 1976 PA 399, MCL 325.1004.

(6) A water withdrawal with regard to which an affirmative determination is issued under this section shall be presumed not to create an adverse resource impact. A presumption under this subsection may be rebutted by a preponderance of evidence that the withdrawal has caused or is likely to cause an adverse resource impact.

(7) The department shall submit a report every 2 years to the senate and house appropriations committees and to the standing committees of the senate and house of representatives with jurisdiction primarily related to natural resources and the environment that identifies the costs to the department in reviewing petitions under this section and in reviewing applications for permits under section 32723. Additionally, the report shall detail the revenues generated from petitions under this section, permit applicants under section 32723, and reporting fees under section 32707.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

**324.32725 Water users committee; establishment; purpose; composition; occurrence of adverse resource impacts; recommended solution proposed by department; order by director; petition; "unverified petition" defined.**

Sec. 32725. (1) All persons making large quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A water users committee may be composed of all registrants, water withdrawal permit holders, and local government officials within the watershed.

(2) If the department determines by reasonable scientifically-based evidence that adverse resource impacts are occurring or are likely to occur from 1 or more large quantity withdrawals, the department shall notify the water users committee in the watershed or shall convene a meeting of all registrants and water withdrawal permit holders within the watershed and shall attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

(3) If, within 30 days after the department has notified the water users committee or convened the meeting under subsection (2), the registrants and water withdrawal permit holders are not able to voluntarily agree to measures that would prevent adverse resource impacts, the department may propose a solution that the department believes would equitably resolve the situation and prevent adverse resource impacts. The recommended solution is not binding on any of the parties.

(4) The director may, without a prior hearing, order a person holding a water withdrawal permit to immediately restrict a withdrawal if the director determines by clear and convincing scientific evidence that there is a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall specify the date on which the withdrawal must be restricted and the date on which it may be resumed. An order issued under this section shall remain in force and effect for not more than 30 days and may be renewed for an additional 30 days if the director determines by clear and convincing scientific evidence that conditions continue to pose a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall notify the person that the person may request a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearing shall be held within 10 business days following the request, unless the permittee requests a later date. As an alternative to requesting a contested case hearing, a person subject to an order under this section may seek judicial review of the order as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(5) A registrant or water withdrawal permit holder may submit a petition to the director alleging that adverse resource impacts are occurring or are likely to occur from 1 or more water withdrawals. The director shall either investigate the petition or forward the petition to the director of the department of agriculture if the water withdrawals are from an agricultural well. The petition shall be in writing and shall include all the

information requested by the director or the director of the department of agriculture, as appropriate.

(6) A person who submits more than 2 unverified petitions under this section within 1 year may be ordered by the director to pay for the full costs of investigating any third or subsequent unverified petition. As used in this subsection, "unverified petition" means a petition in response to which the director determines that there is not reasonable evidence to suspect adverse resource impacts.

**History:** Add. 2006, Act 36, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32726 Local ordinance.**

Sec. 32726. Except as authorized by the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32727 Exemption.**

Sec. 32727. A withdrawal pursuant to part 111, 115, 201, or 213 is exempt from the requirements of this part.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451

### **324.32728 Other laws; effect.**

Sec. 32728. This part shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or the applicability of other laws providing for the protection of natural resources or the environment.

**History:** Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

**Popular name:** Act 451